STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 21, 2011

In the Matter of NORWOOD/YATES, Minors.

No. 299003
St. Joseph Circuit Court
Family Division
LC No. 2008-001225-NA

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*)[1] (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (m) (parental rights to a sibling voluntarily terminated).[2] We affirm.

I. FACTS

This family's history with protective services dates back to at least 1996. At that time, respondent had three children, twin sons (not the subject of this appeal) and a daughter, N.N. On July 24, 1997, respondent voluntarily relinquished her parental rights to the twins, however, N.N. was permitted to return to respondent's care. Thereafter, respondent gave birth to a daughter, Pa. Y., and a son, Pe. Y. Respondent's parental rights to these three children are at issue in this appeal.

[1] The trial court's order cites MCL 712A.19b(3)(c)(*ii*), instead of (c)(*i*), as a ground for termination. On several occasions the court and the parties specifically recited the language of (c)(*i*), but attributed it to (c)(*ii).* It is clear from the record that the court intended to terminate parental rights pursuant to (c)(*i*).

[2] MCL 712A.19b(3)(m) has been amended, effective September 4, 2010, to require a showing that the voluntary termination of parental rights followed the initiation of proceedings involving certain aggravated circumstances. Because the order appealed was entered in June 2010, the amendment did not apply to this proceeding.

In December 2008, the police were summoned to respondent's home twice. The first time, N.N. had called the police because four men, registered sex offenders, refused to leave the home. The second call to the police involved a domestic dispute between N.N. and respondent. When the police officers arrived, they found the home to be in a state of disarray. Trash was piled throughout the house, dirty clothes littered the floors, and the home lacked adequate food. Respondent admitted a long history of drug and alcohol use but explained that her substance abuse was an effort to self-medicate for the pain associated with her multiple sclerosis. The children were removed from the home and a petition was filed seeking temporary custody.

At the adjudication on January 29, 2009, respondent offered to plead to an amended allegation that she had a history of marijuana use and that such use was contrary to the children's best interests. On the record, respondent made admissions to this effect. Thereafter, the court entered its order of adjudication wherein it found that there were statutory grounds to take jurisdiction of the children because there was a substantial risk of harm to their mental well-being. Pursuant to the Order of Adjudication, respondent was ordered to maintain suitable housing, secure transportation, refrain from substance use/abuse, submit to random testing, participate in substance abuse treatment, attend parenting classes, and complete a psychological evaluation. With respect to parenting time, respondent would be permitted to visit her children after submitting three negative screens.

According to court reports, in the first several months, respondent continued to test positive for alcohol consumption, transportation was an issue, housing was unstable, respondent failed to benefit from parenting classes, and parenting time was inappropriate. In March of 2009, respondent underwent a psychological evaluation performed by Dave Jones, M.Ed. Jones found respondent to have limited intellectual and psychological capacity. Respondent was unable to effectively problem-solve and she continued to use alcohol and marijuana. Jones could not recommend returning the children to respondent and he indicated that visits should be monitored with over-nights being contraindicated. Jones further cautioned the court that respondent had threatened to commit suicide if her children were taken away. A suicide assessment indicated that respondent would likely follow through on this threat. Jones found respondent's prognosis to be "poor."

During the year following their removal, the children were moved frequently,[3] thus their housing was unstable, and Pe. Y. struggled with many behavioral issues. On May 5, 2010, a

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[3] Initially, the children were placed with their elderly great-grandmother, then in a temporary foster home. Pa. Y. and Pe. Y. were then placed with relatively inexperienced foster parents who lacked some of the tools needed to address Pe. Y.'s escalating behavioral issues. A decision was made to move the children to another home. This family decided to move to Florida, and the agency approached the initial foster parents about taking the children back into their home. After additional training, the children were once again placed in the care of the initial foster family, and they remained in their care at the time of the termination hearing. During the foregoing period, N.N. ran away and was, at various times, living with her friends, and then an aunt. Efforts were made to establish a guardianship with this aunt; however, they were never

petition was filed seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (m). At this same time, respondent's visitation with the children was suspended due to respondent's conduct, which had been upsetting to the children. Respondent had begun to repeatedly call the foster parents' home phone and cell phone at all hours of the day.

The termination hearing was held on June 2, 2010. Relevant testimony was given as follows. Case aide Lynelle Peterson worked with the family from January 2009 to July 2009, supervising parenting time. In Peterson's opinion, the visits did not go well because respondent frequently failed to prepare for the visits. Respondent also failed to interact with the children, continuously took calls on her cell phone, and promised the children that they would be going home "in a month." Despite Peterson's attempts, respondent was not open to any suggestions or redirection. Moreover, N.N. refused to visit with her mother for the first several months. Their first visit was in May 2009. When N.N. attended the visits they went better because she assumed a parenting role over her younger siblings. According to Peterson, respondent lacked insight into her children's needs and, in fact, it was N.N. that would notice and bring to respondent's attention the needs of the younger children. In Peterson's opinion, over the six months that she supervised, the visits actually got worse. Respondent seemed angrier. Peterson's responsibilities concluded when the case was transferred to Starr-Commonwealth.

Community Mental Health therapist Theressa Wagner began working with respondent in December 2009, approximately six months before the termination hearing. Wagner opined that respondent suffered from major depression-recurrent, although she had not expressed any suicidal ideation. The children's removal as well as respondent's multiple sclerosis contributed to the depression. Wagner explained that this depression limited motivation and affected respondent's ability to function, including her ability to keep appointments and care for her own needs. Wagner acknowledged that respondent required a lot of support in her life. Wagner believed that respondent would improve her overall function with additional parenting classes and other services through Community Mental Health. Respondent had received some support through her participation with Hope Group since February 2009.

Wagner admitted that, as late as December 2009, a year after the children had come into care, respondent still had limited insight into why her children had come into care. However, Wagner believed that respondent had gained more insight recently. Additionally, Wagner acknowledged that respondent had abused alcohol and marijuana as a form of self-medicating, but, although she was not specific, Wagner indicated that respondent had success in overcoming substance abuse issues.

Pa. Y.'s and Pe. Y.'s foster parent testified that when the children first came into his care the children were nervous and afraid, and that in foster care, the children were involved in a lot of activities and were, as a whole, doing better. While the children were always excited to see respondent, after visits with respondent, Pe. Y. experienced a lot of rage associated with statements made by respondent. Respondent's unfulfilled promises also made the children

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consummated. At the time of the termination hearing, N.N. had left her aunt's house and it was thought that she was living in Kalamazoo with her older twin brothers.

angry. The children reported witnessing drug raids in respondent's home. Pe. Y. talked about sleeping in a bed that was covered with blood and Pa. Y. reported seeing a man hold a gun to respondent's head. The children frequently experienced nightmares. In addition, respondent asked the foster parents for money.

Department of Human Services (DHS) employee Lindsay Post began working with the family in March 2009. Post explained that suitable housing was one of the barriers to reunification. Respondent moved four times since the children had been removed. She was currently paying $600 a month in rent, which was nearly her entire disability payment related to her diagnosis with multiple sclerosis. Post testified that, in the last six months, there had been seven contacts with the police at respondent's apartment. Several of these contacts were related to neighbors involved in their own domestic violence and child neglect issues. Apparently, respondent had a relationship with those individuals. Post was concerned about the people of questionable character that respondent continued to bring into her life.

Post further testified that transportation was a major barrier. Because of her illness, respondent was required to rely upon others to transport her. She was, at various times, given gas money and bus tickets. She also represented that her father, Stephen McMasters, would assist her with transportation. However, respondent still failed to demonstrate any independence and that she could meet her own needs, let alone those of her children when it came to transportation.

Post reviewed for the court two DHS assessments, one performed in May 2009 and the other in February 2010. In the nine months between the two strength assessments, respondent demonstrated little or no improvement in parenting skills, emotional stability, money management, and substance abuse. Most of the assessment remained the same after nine months. The only area of improvement was in parenting skills. In this regard, respondent went from being assessed as "destructive or abusive parenting style" to "improvement needed."

With respect to parenting classes, respondent participated in a program in January and February 2009, but she failed to successfully complete it. Respondent was again offered parenting classes in April through June 2009 with Mary Corfman. At the conclusion of this parenting program, respondent was assessed as needing improvement. Regarding substance abuse, visits were suspended in January and September 2009 due to positive substance screens. Although respondent represented that she attended AA/NA, she failed to provide the requested verification documentation. Respondent tested positive for alcohol use on January 4, 2010, however, between that date and the termination hearing, respondent's screens were all negative.

Respondent was offered parenting time; however, unsupervised visitation was never appropriate, because, according to Post, the visits never improved to a point where respondent could be left alone with her children. Respondent continued to require redirection and she continued to make promises to the children that she could not keep, particularly about when they might be able to return home.

Post further testified that respondent had continually participated in services with the Domestic Assault Shelter since May 7, 2009. She also participated in services with the Hope Group since February 24, 2009, and with the Day Reporting Center and the Community Healing

Center. Nevertheless, respondent exhibited no real understanding of why the children came into care, and she did not take any responsibility for the circumstances. Respondent failed to demonstrate that she had benefited from the services offered, particularly those related to parenting education, and further failed to demonstrate that she was self-motivated and could independently care for her children. In Post's opinion, if the children were returned to respondent, there would be serious concerns for their health and safety. Respondent had yet to demonstrate that she could care for herself, let alone two young children and a teenager.

Starr Commonwealth foster care worker Charles Tresenriter was assigned to the family in August 2009 and supervised several of respondent's visits with her children. Tresenriter observed respondent's inappropriate conversations with the children and overheard respondent cast blame on N.N. for the family's problems. He also noted a lack of parenting skills. Tresenriter provided redirection and instruction to respondent during visits. Up until a month earlier, when visitation had been halted, respondent still had not demonstrated improvement during parenting time. Tresenriter discovered that other case aides were providing unauthorized transportation to respondent. It was unauthorized because, as part of her goals, respondent was required to demonstrate that she could get to parenting time, which would reflect on her overall ability to provide for her family's transportation needs in the future. According to Tresenriter, respondent lacked insight into her children's needs, which she was unable to prioritize. Tresenriter acknowledged respondent's cognitive deficiencies and characterized her as engaging in adolescent thinking.

Tresenriter explained that there had been a delay in counseling for the children because, as a result of the changing of foster homes, the time to adjust in each home, and then the circumstances within each home, it took several months to identify the needs, secure the authorization, and then have the children evaluated. Nevertheless, the children's needs were currently being met.

When asked if he recommended termination of parental rights, Tresenriter explained that, while other services could be provided, he did not believe that they would be beneficial. Furthermore, there really were not any more services left to offer respondent that had not already been tried. Tresenriter reasoned that respondent had not demonstrated any improvement or effort, and thus it would be unlikely that she would do so in the future. When asked why family therapy was not appropriate, Tresenriter explained that individually the children had not improved or healed to a point where it would be appropriate to have them in counseling with respondent.

Finally, Tresenriter was presented with documentation related to the prior child protective proceedings from 1996 to 1997. At that time, respondent had yet to be diagnosed with multiple sclerosis. It was noted that many, if not all, of the barriers present in the previous case continued to exist in the present matter, including impaired judgment, lack of insight, and deficient parenting skills.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). This Court reviews that finding under the clearly erroneous standard. *Id.*; MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. ANALYSIS

Respondent first argues that the trial court clearly erred when it concluded that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

As noted, the trial court terminated respondent's parental rights to her children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (m), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing, finds either of the following:
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> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.

These statutory grounds for termination were established by clear and convincing evidence. The conditions that led to adjudication included substance abuse and respondent's inability to provide a safe and suitable home for her children. Respondent was then offered a multitude of services, including two parenting classes, parent coaching during parenting time,

therapy with a parent-education component, substance abuse treatment, drug screens, visitation, and gas money/bus tokens. At the time of termination, it was clear that, although respondent had participated in many of the services offered, she had failed to benefit from them.

Additionally, respondent was unable to demonstrate that she could safely, appropriately, and independently care for her children. During the entire time the children were in care, respondent was never allowed unsupervised visits. At the core of respondent's problems was her lack of insight. Respondent did not recognize her children's needs nor did she take responsibility for the family's circumstances. In addition, while the children were in care, respondent could not obtain stable housing for herself and she continued to maintain relationships with individuals of questionable character. Furthermore, despite respondent's contention that she had solved her transportation issues, it was clear that this was not the case.

Moreover, there was clear and convincing evidence that the conditions that led to adjudication would not be rectified within a reasonable time. Respondent had not made any significant progress while the children were in care. Indeed, the barriers that existed at the time of the termination hearing were the same barriers that existed when she voluntarily relinquished her parental rights to the twins in 1997. Respondent's long history of poor parenting, as well as her lack of insight, warranted the unfortunate conclusion that it was unlikely that respondent would make any meaningful changes within a reasonable time. Considering the foregoing evidence, and the court documents establishing a voluntary termination of parental rights in 1997, we conclude that the trial court did not err when it found clear and convincing evidence to terminate parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (m).

In support of her argument on appeal that termination was unwarranted, respondent raises several additional issues. First, she argues that the DHS allegedly never recommended termination of her parental rights. However, the record does not support this contention, as it demonstrates that an employee of the DHS did recommend termination of parental rights to the court. Moreover, the DHS recommended termination in a petition filed on its behalf by the St. Joseph County prosecutor.

Next, respondent contends that the petition seeking termination of parental rights violated MCR 3.977(F) because it contained new allegations different from those in the original petition for jurisdiction. Under MCR 3.977(F), where the supplemental petition seeking termination alleges one or more "new or different" circumstances than those that led the court to take jurisdiction of the children, the new circumstances must be proven by clear and convincing legally admissible evidence. However, the allegations in the termination of parental rights petition that respondent characterizes as "new" pertain to respondent's lack of compliance with her treatment plan, which was prepared to address the concerns resulting in the children's removal and placement in the court's temporary custody. Consequently, these allegations relate to the court's initial assumption of jurisdiction. These are not "new or different" circumstances than those that led the court to take the children into jurisdiction. Therefore, MCR 3.977(F) is not applicable. Instead, the court was permitted to receive and rely upon all relevant and material evidence pursuant to MCR 3.977(H).

Next, respondent argues that reasonable efforts were not made to avoid termination of her parental rights. Respondent reasons that had she been offered additional services, specifically

family therapy, she eventually would have been able to parent her children. As discussed, respondent was offered a multitude of services, and Tresenriter testified that there really were no more services to offer respondent. Tresenriter further explained that, with respect to family therapy, such efforts were usually taken at a point where both the parents and children had addressed their individual issues and it was now time to have them work together. In this case, the children had not improved or healed to a point where it would be appropriate to have them in counseling with respondent. Respondent had never reached a point where her progress would warrant family counseling. Petitioner must make reasonable efforts to promote reunification and to avoid termination of parental rights. However, petitioner need only offer reasonable services. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). It has no duty to provide every conceivable service.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Before terminating parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *Sours*, 459 Mich at 632-633. Additionally, the trial court must make an affirmative finding that termination of parental rights is in the child's best interests. If a statutory ground for termination is established and termination of parental rights is in the child's best interests, the court must terminate parental rights. MCL 712A.19b(5). There is no specific burden on either party to present evidence of the children's best interests, but rather, the trial court should consider the entire record. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). This Court reviews the trial court's decision regarding the child's best interests for clear error. *Id*. at 356-357.

B. ANALYSIS

Respondent asserts, in a cursory fashion, that there was not clear and convincing evidence that termination of parental rights was in the children's best interests because a bond existed between respondent and her children and respondent was participating in services. We disagree.

The record supported the trial court's conclusion that Pa. Y. and Pe. Y. had suffered severe damage as the result of respondent's poor parenting. The court relied on psychological evaluations of the children, which showed that Pe. Y suffered from "adjustment disorder with mixed anxiety and depressed mood," and Pa. Y. had a similar diagnosis, although her outlook was a bit more optimistic. The court noted that the professionals and other observers who came in contact with the children concluded that "they must . . . have stability and a sense of safety to recover the post traumatic syndrome and depression they have." Indeed, as noted, Post, of the DHS, stated that, if the children were returned to respondent, there would be serious concerns for their health and safety. The trial court further found that N.N. had "not received adequate parenting . . . all her life," and respondent "can't help her." This finding is supported by Peterson's testimony, which indicated that it was N.N. who assumed a parenting role over her younger siblings during visits with respondent.

Although, as respondent asserts, a bond might have existed between respondent and her children, it was not a healthy, nurturing bond. While it is true that the children continued to be excited about visitation, after parenting time they were angry and disappointed. Further, while respondent did participate in services, as Tresenriter explained, respondent had not demonstrated any improvement or effort, and thus it would be unlikely that she would do so in the future. Accordingly, there was clear and convincing evidence that termination of parental rights was in the children's best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Kurtis T. Wilder